

Testimony of
Mr. Matthew J. Szulik

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I would like to thank the members of the committee for allowing me to contribute my views on a topic that I feel is of vital importance to the future of our nation. I stand before you today as Winston Churchill said, "only to fight while there is a chance, so we don't have to fight when there is none." Through your actions, members of the committee can affect a remedy that many members of the growing, global technical community hope will restore balance and inspire competitiveness in a networked society free of monopolistic practices.

I stand before you today as a representative of the open source community. And as the CEO of Red Hat, Inc., generally regarded as the most successful company that sells and supports open source software. The Red Hat Linux operating system software we sell is created by a global community of volunteers. Volunteers who share their creation of intellectual property. The basis for their work is an open license that requires improvements to the technology be shared with others. Programmers submit their software code, their creations to the scrutiny of a very critical community of peers. The best code wins and is included in the next version of the software. This open communication strikes me as so perfectly American. I envision the early leaders of this country drawing up the tenets of our constitution in much the same way--in the open, in pursuit of a solution that is fair and of benefit to all.

Some have called this the technology equivalent of a barn-raising. Through this approach Linux software has grown, improved and become one of the most stable, cost-effective operating systems in the world. It continues to improve every day.

The values and practices of Red Hat are in most ways antithetical to those of the monopolist I am here to reference.

Much testimony has been provided on the practices by the monopolist, which in my view have placed a technical and financial stranglehold on the technology industry. Mr. McNealy and Mr. Barksdale and others that have come before me have done a

good job of presenting the issues to the committee. I support their conclusions that the software industry needs government intervention. I support their requests for strong enforcement of antitrust laws.

I would like to reaffirm their case, that innovation will occur when there is a competitive environment free of monopolistic practices.

Open source software arose because of a lack of alternatives that allowed the individual to choose the best tool for the job. Over the past 5 years, projects created by Red Hat and the open source community have become solutions of choice in areas of standards-based Internet software development, areas that the monopolist does not yet control.

The growth of the Linux operating system is an example of this acceptance. The Apache web server is another, it now holds a market-leading position.

However, the Internet browser, desktop operating system and office productivity software are areas that have continued to be influenced by one vendor alone.

One of the reasons I am so deeply troubled by the consent decree in this case is that it seems to run counter to things that are fundamental to our identity as Americans. We value fair play, ethical competition, abiding by the rules and fostering innovation. The consent decree throws all of this away. It acknowledges that my competitor has broken the law; that through these violations it has built one of the most formidable businesses in the world. Yet the consent decree does little to prevent future misconduct. I feel if the antitrust laws are not enforced, the will and spirit of the true innovators will suffer.

Lengthy legal critiques of the consent decree are already on record. In the interest of time I will not subject you to more

this morning. I am sure you've heard enough legal arguments in considering this topic. Rather, I want to make a few key points:

First, their growing monopoly power has seriously warped the technology market. Now that my competitor is a convicted monopolist, the world can see in the public record what those in technology companies have known for years: they don't compete fairly, they use their dominance in one market to dominate

others, and they stifle innovation in the name of competition. The only way to stop this - to restore fairness to the market - is a settlement of this case that denies the monopolist the fruits of its past actions and provides remedial measures on the monopolist for its violations of the law.

Second, the consent decree as it stands today, falls far short of this requirement. Given the monopolist's history of skating up to the edge, or over the edge, in not fully complying with prior settlements, it will take very strong measures to change their behavior. In the words of Massachusetts Attorney General Thomas F. Reilly, commenting on the consent decree: "Five minutes after any agreement is signed with Microsoft, they'll be thinking of how to violate the agreement. They're predators. They crush their competition. They crush new ideas. They stifle innovation. That's what they do."

Microsoft is deeply concerned about open source software and has already making overtures on how it will use dominance rather than technical expertise to crush it.

The CEO of the monopolist said, quote, "Linux is a cancer that attaches itself in an intellectual property sense to everything it touches."

The head of the monopolist's Windows Platform Group has similar beliefs: He said publicly, quote, "Open source is an intellectual property destroyer. I can't imagine something that could be worse than this for the software business." He goes on further to say, "I'm an American, I believe in the American way. I worry if the government encourages open source, and I don't think we've done enough education of policy-makers to understand the threat."

In my view, the consent decree should create a level playing field between Windows and Linux. Because of their comments, and their past actions, I believe the current consent decree is not strong enough. They will circumvent it.

Third, we have all heard of the Digital Divide. It's the gap in information and computing access between the haves and have nots in our society. As many states struggle with declining revenues, I believe these shortfalls will have a material impact on the public funding of K-12 and higher education. The path to the development of an information economy can not be limited to a sole supplier, who in my view has seen education up to this point, relative to its financial position as a market - not as a responsibility. I believe the lack of choices and high recurring

costs is in part responsible for this growing chasm between the two Americas.

I'm involved with North Carolina Central University - an historically black university that cannot afford the monopolist's restrictive licenses and forced upgrades. I see this sad experience in schools throughout our country. Walk the halls of schools in East Roxbury, MA or Snow Hill, NC and question how we can expect, as a nation, to improve the future for our youth when schools must allocate 30-40% of their IT budget for software and hardware upgrades. Provided choice, these same dollars could be put into teacher training and acquiring more technology.

The Chinese government understands this. The French and German governments as well. They have stated that proprietary software will not be used to develop government and educational infrastructure.

But the monopolist has more than 90% of the desktop operating system market and more than 70% of the Internet browser market. What choices do our schools have? What choices do our citizens have? As the monopolist extends its monopoly into additional markets, largely unfettered by the legal system and apparently immune to the consequences of their actions - the Digital Divide widens.

Biologists know that an unbalanced ecosystem, one dominated by a single species, is more vulnerable to collapse. I think we're seeing this today. Under the consent decree, it will continue and probably get worse.

In America, history has taught us that there is no mechanism more logical and efficient and than a free and open market. Our competitor's illegal monopolistic actions have significantly reduced the open market in information technology. I believe that in extreme cases like this, it is the role of the government to step in and restore balance.

Thank you.